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Going to China? Trademark Your Intellectual Property Now!

By Kevin Latner

China's rapid growth in production, income, and spending has spurred commensurate growth in demand for foods and other products. The expanding numbers of middle- and upper middle-class consumers are increasingly interested in food quality and safety, and U.S. food products are considered to fill the bill. For example, U.S. pork, California grapes, Sunkist oranges, Washington apples, and Northwest pears on Chinese supermarkets shelves account for part of the more than \$7.6 billion in U.S. agricultural, fish, and forest product exports to China in fiscal 2006.

But despite the market's robust growth and potential for more, by some accounts, U.S. producers lost more than \$84 billion last year from intellectual property rights infringements in China. Automobiles, sports equipment, drugs, foods and other agricultural products have all suffered. The more a product is recognized as a quality product, the more likely it is to be counterfeited and sold in the domestic market and in other countries — even re-exported to the United States.

Help Is at Hand

China is rapidly developing the tools necessary for you to protect your intellectual property, however. A very small investment of time and money can yield large dividends and future protection. While quality U.S. food products often make it to store shelves, an estimated 20-30 percent of products are counterfeit. "Top Ten" canned tomatoes that look very similar to Del Monte's brand, lemons labeled "Sunkist Valencia," or nuts identified as

"California pistachios" on what are clearly imitations from China or third countries compromise brand value and diminish profit. The Wisconsin Ginseng Board reports their growers have lost over \$1 billion dollars in China over the last 10 years as a result of counterfeit products.

Big companies that have established themselves in China include protecting their intellectual property as an integral part of the cost of doing business. This means registering your patent, copyright, or trademark, and ensuring you understand

FAS IPR Office Protecting U.S. Suppliers

In response to these intellectual property threats, FAS established the IPR (Intellectual Property Rights) Office in the Agricultural Trade Office, Beijing, China. The IPR Office provides intellectual property protection assistance to U.S. cooperators, agricultural companies, and interests entering or already established in the Chinese market.

For more information on how the IPR Office can assist you, visit the website: <http://www.USDAChina.org/>

or contact LaVerne E. Brabant, Mark Petry, or Yuanchuan Liang: E-mail: ChinaIPR@usda.gov

The more an item is recognized as a quality product, the more likely it is to be counterfeited and sold in China or exported to other countries, even the United States.

and use the progressive enforcement mechanisms available in China to stop infringers.

The first step in protecting intellectual property is to trademark your logo or brand name. While there can be some pitfalls related to registration, it is a relatively easy process. Basic trademark registration requires an application, six copies of the trademark, and a power of attorney authorizing a trademark registration agent to submit the application on your behalf. Geographical indications and collective and certification trademarks are special or unique cases with special solutions. Problems can arise if your trademark has already been registered in China by unscrupulous actors or squatter. Squatting was a common practice in the early days of Internet domain name registration where registration is first to file. China is a "first to file" trademark registration country: whatever party first registers a trademark has the right to use it, whether or not that party originated the trademark. U.S. firms accustomed to operating in the United States, which is a "first to use" country, can be caught off guard.

Prevention is the best solution to squatting, so registering a product early in China, and perhaps in most markets, is critical. The alternatives, such as litigation or having to purchase the trademark you created, can be costly.

Registration requirements are straightforward. Professional intellectual property rights attorneys or trademark registration agencies can do a basic registration, including a search for prior registrations, document preparation, and submission, for under \$500. This is a one trademark per classification cost: when your product crosses classification boundaries, the cost increases.

Because U.S. and Chinese classification systems differ, having an intellectual property rights specialist help classify your product is

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key. Also make sure you — not your agent — are identified as the applicant. Get started as early as possible since registration often takes two to three years. Once you are registered, your protection is extensive. Whether it is at the shores of the United States or China, you can request that appropriate officials seize any counterfeit product based on your certification the product is counterfeit and a citation to the China Trademark Offices Internet website, where your registration is located. China's increasingly large infrastructure of piracy police is developing into a significant force to deal with counterfeiting challenges, and once your product is registered, you have the right to focus their attention on the protection of your intellectual property.

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